

**BEFORE THE
FEDERAL ELECTION COMMISSION**

2015 SEP 25 AM 9:45

Brad Woodhouse
American Democracy Legal Fund
455 Massachusetts Avenue, NW
Washington, DC 20001

Complainant,

v.

MUR # 6969

MMWP12 LLC
704C E 13th #520
Whitefish, MT 59937

K2M LLC
704C E 13th #520
Whitefish, MT 59937

Mark Kvamme
704C E 13th #520
Whitefish, MT 59937

Paul Johannsen
704C E 13th #520
Whitefish, MT 59937

New Day Independent Media Committee, Inc., and Susan Jones, Treasurer
4679 Winterset Drive
Columbus, OH 43220

Respondents.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against MMWP12 LLC ("MMVP"), K2M LLC ("K2M"), Mark Kvamme, Paul Johannsen, and New Day Independent Media Committee, Inc. ("New Day") and Susan Jones, its treasurer, in her official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission regulations, as described below.

Publicly available reports indicate that K2M, Mark Kvamme, and Paul Johannsen violated the Act by contributing to New Day in the name of another person, specifically MMWP12. It appears that MMWP12 violated the Act by knowingly permitting its name to be used for the making of such contributions to New Day and by failing to register and file disclosures as a political committee. Further, New Day violated the Act by knowingly accepting a contribution that was made in the name of another.

A. FACTS

On June 30th, an "obscure" limited liability company made a \$500,000 contribution to New Day, an independent expenditure only committee supporting Governor John Kasich's presidential candidacy.¹ The Montana-based company was formed the day before it made the half-million-dollar contribution.² State business records indicate that MMWP12 is controlled by another corporation, K2M,³ with which it shares its principal office address. K2M is, in turn, controlled by just two named officers: Mark Kvamme and Paul Johannsen.⁴ Both have been business partners,⁵ and Mr. Kvamme has strong ties to Governor Kasich as a "long-time" ally and former official in his administration.⁶ Mr. Kvamme has served as Governor Kasich's

¹ Henry J. Gomez, *John Kasich's Super PAC Tapped into His Longtime Core of Columbus Contributors*, CLEVELAND.COM (July 30, 2015, 9:34 PM), http://www.cleveland.com/open/index.ssf/2015/07/john_kasichs_super_pac_tapped.html; Michael Beckel, *Why Is an Obscure Montana Company One of John Kasich's Biggest Boosters?*, CTR. FOR PUB. INTEGRITY (July 30, 2015, 6:21 PM), <http://www.publicintegrity.org/2015/07/30/17733/why-obscure-montana-company-one-john-kasichs-biggest-boosters>; see also FEC Form 1, Statement of Organization, New Day Independent Media Committee, Inc. (Aug. 5, 2015), <http://docquery.fec.gov/pdf/193/201508070300018193/201508070300018193.pdf>.

² Beckel, *supra* note 1.

³ *Id.*

⁴ *Id.*; see also MMWP12 LLC Business Record, MT Sec'y of State's Office, <https://www.documentcloud.org/documents/2187165-mmwp12-llc-montana-business-records.html> (last visited Sept. 9, 2015).

⁵ *Whitefish Gets a Look at Block 46*, THE DAILY INTER LAKE (May 30, 2007, 1:00 AM) ("Great Northern Ventures managing partner Paul Johannsen is a former president of the Whitefish branch of First Interstate Bank. He's partners with Mark Kvamme of Sequoia Capital and Richard Fuld, Lehman Brothers Holding chief executive officer. Kvamme and Johannsen are the principal managers of Block 46."), http://www.dailyinterlake.com/members/whitefish-gets-a-look-at-block/article_5b88a7bd-fe86-5342-9d3d-194461c2d203.html.

⁶ Beckel, *supra* note 1.

Department of Development Director, Director of Job Creation,⁷ and as the head of JobsOhio, the state's privatized economic development agency.⁸ Additionally, Mr. Kvamme has donated more than \$100,000 to Governor Kasich and other Ohio Republicans since 2010 and has provided the governor his private jet to campaign in New Hampshire.⁹ When asked about his connection to MMWP12, Mr Kvamme responded, "I'm not confirming or denying. It is what it is."¹⁰

B. LEGAL ARGUMENT

1. MMWP12 Was Used to Make Contributions in the Names of Other Persons.

The Act provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution."¹¹ The regulation implementing the statute provides the following two examples of "contributions in the name of another":

- Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate committee at the time the contribution is made.¹²
- Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹³

Publicly available news reports strongly suggest that Mr. Kvamme, Mr. Johannsen, and K2M violated 52 U.S.C. § 30122 by giving "money . . . all or part of which was provided to the contributor," MMWP12, even though Mr. Kvamme, Mr. Johannsen, and K2M were the true contributors; and did so without disclosing that they were the source of the money to New Day at

⁷ *Id.*

⁸ Gómez, *supra* note 1.

⁹ Beckel, *supra* note 1.

¹⁰ Zachary Mider, *Another Way to Mask Super Rich Donors*, BLOOMBERG (Aug. 21, 2015, 5:00 AM), <http://www.bloomberg.com/politics/articles/2015-08-21/another-way-to-mask-super-rich-donors>.

¹¹ 52 U.S.C. § 30122.

¹² 11 C.F.R. § 110.4(2)(i).

¹³ *Id.* § 110.4(2)(ii).

the time the contribution was made.¹⁴ Additionally, New Day is in violation of the Act because it knowingly accepted those contributions in the name of MMWP12 and reported the contributions as made by MMWP12, even though it was almost certainly aware that Mr. Kvamme, Mr. Johannsen, and K2M were the true source of the funds.

2. MMWP12 Failed to Register As a Political Committee Under the Act.

The Act defines a political committee as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year."¹⁵ The Supreme Court has interpreted "political committee" to encompass organizations whose "major purpose . . . is the nomination or election of a candidate."¹⁶

The Federal Election Commission ("FEC") has explained the connection between the Act and relevant case law:

[D]etermining political committee status under [the Act], as modified by the Supreme Court, requires an analysis of both an organization's specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (i.e., the nomination and election of a Federal candidate).¹⁷

Taking the above together, there is a two-prong test for political committee status under federal law: (1) whether an organization's "major purpose" is to influence the nomination or election of a candidate, and (2) whether the organization receives contributions or makes expenditures of \$1,000 or more in a calendar year.

¹⁴ See *id.*

¹⁵ 52 U.S.C. § 30101(4)(A).

¹⁶ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (per curiam); see also *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) (noting that if a 501(c)(4)'s independent expenditures became "so extensive that the organization's major purpose may be regarded as campaign activity, [then] the corporation would be classified as a political committee" and that, as a result, the corporation "would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.").

¹⁷ Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007), <http://www.gpo.gov/fdsys/pkg/FR-2007-02-07/pdf/E7-1936.pdf>.

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Any entity that meets this test for political committee status must file a statement of organization with the FEC,¹⁸ comply with the organizational and recordkeeping requirements,¹⁹ and file disclosure reports.²⁰ Further, the political committee's disclosures must provide detailed information regarding the committee's financial activities and the identities of donors who have contributed \$200 or more to the committee within the calendar year.²¹

Public reports strongly suggest that MMWP12 has met the two-prong test for political committee status. There is no indication that MMWP12 was created for any other reason than to donate \$500,000 to New Day. Indeed, there are no reports on any other ventures that MMWP12 has pursued since its incorporation. As such, influencing the nomination or election of Governor Kasich seems to be the major purpose of the company. Additionally, the company has met the contribution requirement necessary to trigger political committee status since MMWP12 received \$500,000.²² Given the lack of any revenue or income streams that would have allowed the company to give that contribution on its own, the donation it provided to New Day must have come from outside sources—Mr. Kvamme, Mr. Johannsen, and/or K2M. Therefore, Mr. Kvamme, Mr. Johannsen, and K2M are in violation of the Act by failing to register the MMWP12 as a political committee and file disclosure reports as required under the law.

C. REQUESTED ACTION

As we have shown, MMWP12 and Mr. Kvamme, Mr. Johannsen, and K2M have violated the Act by (1) making contributions in the name of another and (2) failing to register and file disclosures as a political committee. We have also shown that New Day Independent Media

¹⁸ 52 U.S.C. § 30103.

¹⁹ *Id.* § 30102.

²⁰ *Id.* § 30104.

²¹ *Id.* § 30104(b).

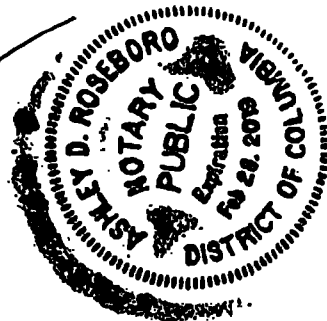
²² For an example of a for-profit entity found to be a political committee, see *FEC v. Malenick*, 310 F. Supp. 2d 230 (D.D.C. 2004), *rev'd on other grounds*, No. Civ. A. 02-1237(JR), 2005 WL 588222 (D.D.C. Mar. 7, 2005).

Committee has violated the Act by knowingly accepting contributions that were made in the name of another. We respectfully request that the Commission investigate these violations, and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 17 day of September, 2015.



Notary Public

My Commission Expires:

2/28/2019